

FELTON L. MATTHEWS,	)	
	)	3:07-CV-00565-LRH (VPC)
Plaintiff,	)	
	)	
vs.	)	<b><u>REPORT AND RECOMMENDATION</u></b>
	)	<b><u>OF U.S. MAGISTRATE JUDGE</u></b>
LINDA BUCK, <i>et al.</i> ,	)	
	)	
Defendants.	)	January 30, 2009
	)	

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's "Motion for Emergency Preliminary Injunction. FRCP Rule 11" (#57). Defendant opposed (#61) and plaintiff replied (#64). For the reasons stated below, the court recommends that plaintiff's motion (#57) be denied.

Plaintiff Felton L. Matthews (“plaintiff”), a *pro se* prisoner, is currently incarcerated by the Nevada Department of Corrections (“NDOC”) at Ely State Prison (“ESP”) (#16). Plaintiff brought his original action pursuant to 42 U.S.C. § 1983, alleging violations of his First Amendment right to freedom from retaliation and his Fifth Amendment right against double jeopardy, while he was incarcerated at Lovelock Correctional Center (“LCC”) (#15). Plaintiff names as defendants Linda Buck, correctional officer at LCC, Terry Lindberg, supervisor of unit 3B at LCC, Jack Palmer, LCC warden, and Howard Skolnik, director of NDOC. *Id.*

Plaintiff filed this preliminary injunction on July 30, 2008. Plaintiff requests the court grant him the following:

- “1. Bivens Act jurisdiction for unknown CCDC actor;
2. Injunction on the use of the NDOC-CCDC I-files and C-file right now!
3. Injunction on anymore mail tamperings and blocks from and to any court. (There are new blocks); and

1 4. A damned evidentiary hearing with an order for copies above  
 2 NDOC AR 711 to show the court the evidence. This is pending  
 3 discharge with prejudice if the pardon's board refuses to capitulate  
 as they now know about the conduct."

4 #191, p. 4 (emphasis in original).

5 The court notes that plaintiff is proceeding *pro se*. "In civil rights cases where the plaintiff  
 6 appears *pro se*, the court must construe the pleadings liberally and must afford plaintiff the benefit  
 7 of any doubt." *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988);  
 8 *see also Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

## 9 II. DISCUSSION & ANALYSIS

### 10 A. Discussion

#### 11 1. Mootness

12 "Article III of the Constitution limits federal courts to the adjudication of actual, ongoing  
 13 controversies between litigants." *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528  
 14 (1988). "Mootness is a jurisdictional issue, and 'federal courts have no jurisdiction to hear a case  
 15 that is moot, that is, where no actual or live controversy exists.'" *Foster v. Carson*, 347 f.3d 732,  
 16 745 (9<sup>th</sup> Cir. 2003), *quoting Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9<sup>th</sup> cir. 1999).  
 17 "If there is no longer a possibility that [a litigant] can obtain relief for his claim, that claim is  
 18 moot and must be dismissed for lack of jurisdiction." *Id.*, *quoting Ruvalcaba v. City of Los*  
 19 *Angeles*, 167 F.3d 514, 521 (9<sup>th</sup> Cir. 1999).

### 20 B. Analysis

21 This court recommended summary judgment be granted for defendants as to all three  
 22 counts of plaintiff's complaint (#82). Therefore, no actual controversy continues to exist and there  
 23 is no longer a possibility that plaintiff can obtain relief for his claims. Plaintiff's motion for  
 24 preliminary injunction must thus be dismissed as moot.

## 25 III. CONCLUSION

26 Based on the foregoing and for good cause appearing, the court concludes that plaintiff's  
 27 motion for emergency preliminary injunction (#57) is now moot as defendants' motion for  
 28 summary judgment (#66) was recommended granted by this court (#82). As such, the court

1 recommends that plaintiff's motion (#57) be **DENIED**.

2 The parties are advised:

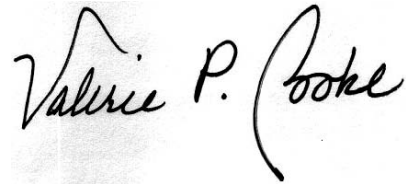
3 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,  
4 the parties may file specific written objections to this report and recommendation within ten days  
5 of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
6 Recommendation" and should be accompanied by points and authorities for consideration by the  
7 District Court.

8 2. This report and recommendation is not an appealable order and any notice of appeal  
9 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's  
10 judgment.

11 **IV. RECOMMENDATION**

12 **IT IS THEREFORE RECOMMENDED** that plaintiff's motion for preliminary  
13 injunction (#57) be **DENIED**.

14 **DATED:** January 30, 2009.



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17 **UNITED STATES MAGISTRATE JUDGE**  
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